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No. II] NEW DELHI, TUESDAY, JANUARY 13, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 13th January 1953

S.R.O. 115.--WHEREAS the election of Sardar Sampooran Singh, as a member of the Legislative Assembly of Patiala and East Punjab States Union from the Dhanaula Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951, (XLIII of 1951) by Shri Ganda Singh, son of Shri Bhola Singh, Village Dan Garh, Tehsil and District Barnala;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL BARNALA

ELECTION PETITION No. 211 OF 1952.

(Dhanaula Constituency—
Pepsu State Assembly).

CORAM:

Shri Jagit Singh, M.A., LL.B.—Chairman.

Shri Sheo Gopal Mathur, B.A., LL.B. and

Shri Dalip Singh Jain, M.A., LL.B.—Members.

Shri Ganda Singh—Petitioner.

Versus

Shri Sampuran Singh and others—Respondents.

PRESENT:

Shri Muni Lal Kalia, counsel for the petitioner.

Shri Sampuran Singh respondent No. 1.

JUDGMENT

Sardar Ganda Singh, an elector in the Dhanaula Constituency, of the Patiala and East Punjab States Union Legislative Assembly, has challenged the validity of the election of Sardar Sampuran Singh, respondent No. 1, to the seat from the

said constituency by this petition. He contends that Sardar Sampuran Singh was not qualified to be nominated for election as he had been convicted for an offence and sentenced to imprisonment for more than two years within a period of five years before the date of election. As regards his disqualification for election an objection had been taken before the Returning Officer but the Returning Officer had rejected it with observations that the jail record of the candidate produced before him disclosed that the candidate was released from jail before a period of two years had expired under orders of the Government and that the sentence in his case was to be interpreted to mean the period of sentence which he had actually undergone. It is contended by the petitioner that the order passed by the Returning Officer was erroneous and illegal and that the sentence for election purposes should be taken to be the same as he had been actually passed by the Convicting Magistrate against him. It is urged that the acceptance of his (respondent No. 1) nomination paper was illegal and it had materially effected the result of the election and it is prayed that the election be declared to be wholly void.

The respondent No. 1 acknowledged the petitioner to be a duly recorded voter in the electoral roll but took objections to the effect that the verification of the petition by him was not according to law, that the petition was not instituted within the prescribed period of limitation and further that the particulars required by Section 83 of the Representation of the People Act, 1951, necessary for the specification of the offence, and the date and order of conviction, were not properly given in the petition. Further it was contended that the order of the Returning Officer overruling the objection raised against his nomination paper was perfectly justified and proper in law and that in his case the sentence was to be taken as reduced to such period as he had actually undergone in the jail.

The respondents No. 2 to 7 did not put an appearance in the case and proceeding are recorded *ex parte* against them.

The points raised by the parties in the case are covered by the following issues:

- (1) Whether the election petition was instituted within the prescribed period of limitation?
- (2) Whether the election petition has not been verified according to law and, if so, what is its effect?
- (3) Has the petitioner failed to comply with the provisions of section 83 of the Representation of the People Act, 1951, as in the election petition the offence for which the respondent No. 1 was convicted, the date and year of conviction, and the Court by which the conviction was recorded, have not been specified?
- (4) Is the Election Tribunal competent to go into the question of limitation of the election petition and the failure of the petitioner to give the particulars as required by Section 83 of the Representation of the People Act?
- (5) Whether the respondent No. 1 was disqualified from being chosen as and for being member of the Patiala and East Punjab States Union Legislative Assembly on account of his being convicted and sentenced to more than two years imprisonment, within five years of the date of nomination, and as such the order of the Returning Officer accepting his nomination paper was illegal?
- (6) To what relief, if any the petitioner is entitled?

FINDINGS

Issue No. 1—

The plea raised in the case that the election petition was not presented within the prescribed period of limitation carries no force. Under Rule 119 of the Representation of the People Act (Conduct of Elections and Election Petitions) Rules, 1951, an election petition against the returned candidate is to be presented under Section 81 of the Representation of the People Act not later than 14 days of the date of publication of the notice in the Official Gazette under Rule 113. The present petition was presented to the Assistant Secretary, Election Commission of India, New Delhi, on 28th of April, 1952, and the notice in respect of it, as required by Rule 113, was published in the Pepsu Government Gazette on 13th April, 1952. Thus it was on the 15th day after the date of the publication of the notice in the Gazette that the petition was presented as the 14th day, the 27th of April, 1952, was a Sunday and a Gazetted holiday. Under the provisions of Section 4 of the

Indian Limitation Act if the last date of presentation of the petition happens to be a gazetted holiday it is to be excluded from computation of the period of limitation. Consequently the petitioner was within his rights to avail of 28th of April, 1952, as well for presentation of his petition, and as such the petition is perfectly within time and the objection against it on the ground of limitation is futile. The issue is decided against the respondent No. 2.

Issue No. 2—

The objection raised in defence calling the verification of the pleadings as defective in law also does not hold correct. The petition contains six paragraphs only and at the end of it the verification runs in the words "the facts contained in the paragraphs from No. 1 to 6 are true to the best of my (petitioner's) knowledge". The verification bears the signature of the petitioner under it and gives the date, on which, and the place, at which, it was signed. A look at the paragraphs of the petition shows that all the facts detailed in it were such which should be expected to be within the personal knowledge of the petitioner and we fail to find any defect in the facts of these paragraphs as being verified within the knowledge of the petitioner. The verification further names the date, on which, and the place, at which, it was signed, as was required by Order 6 Rule 15, Code of Civil Procedure. The plea raised by the respondent the question the verification carries no force at all. The issue is decided against the respondent No. 1.

Issue No. 3—

A plea is taken on behalf of the respondent No. 1 that the petition was not fully in compliance with the provisions of section 83 of the Representation of the People Act, 1951, in as much as it had not named the offence for which the respondent No. 1 was convicted nor did it mention the date and year of conviction and the name of the Court. The petition, in its paragraph No. 3, while giving the facts, on the basis of which the petitioner asserted disqualification of the respondent No. 1 from election, had described this point in the words "the respondent No. 1 stood disqualified on the day of nomination for being chosen as, or being a member of the Legislative Assembly, as he had been convicted of an offence and sentenced to imprisonment for more than two years within five years". The said statement was quite sufficient to bring the fact of offence and conviction, on which the election was challenged, to the notice of the respondent. The material point was that the respondent had been convicted of an offence and sentenced for not less than two years and that much was definite from the allegations contained in paragraph No. 3. It would have been better if further particulars required by the objection, that is, the date and year of conviction and the name of the Court, should also have been added along with the allegation of the offence and sentence, to make the expression more explicit and definite. Such an omission, however, can in no way be said to be fatal. Section 83(1) of the Representation of the People Act, 1951, requires only a concise statement of such facts as are to be considered material for the purposes of the case, to be entered in the contents of the petition, and it has been done in this case. Besides, the defence has not been prejudiced in any way by the alleged omissions. The issue is, therefore, decided against the respondent No. 1.

Issue No. 4—

This issue is not pressed before us. We may, however, add that the Election Tribunal is fully competent to decide the question of limitation in respect of an election petition and also the question about the failure of the petitioner to give necessary particulars required by Section 83 in case they are raised by any party. The issue is decided accordingly.

Issue No. 5—

The chief contention, on which the petitioner challenges the election, is to the effect that the respondent No. 1 had been sentenced for more than 2 years within a period of five years preceding the date of the election, which acted as a bar for the respondent No. 1 to seek election, under Section 7 of the Representation of the People Act, 1951. The respondent No. 1, on the other hand, contends that the order of sentence had ceased to operate as a disqualification against him, in as much he was released long before the completion of the period of his sentence.

The copy of the judgment dated 4th Chet, Sambat 2003, Ex-PA., indicates that S. Sampuran Singh respondent No. 1 was prosecuted for an offence under section 4/18 of the Nabha State Public Safety Ordinance, 1947, for defying an order of the District Magistrate, Amloh, passed under Section 4 of the said Ordinance and was convicted of the said offence and sentenced to two years rigorous imprisonment.

Subsequently in November, 1947, on the occasion of the birth of Shri Maharajkumari Ji Sahiba, a daughter to His Highness Maharaja Malvinder Bahadur of the Nabha State, an order was issued for the release of political offender, and remissions of sentences to certain clauses of prisoners, under the signature of Sardar Kartar Singh (R.W. 4) as Home Minister for Chief Minister Nabha. The order runs as follows.—

“In order to celebrate the auspicious birth of Shree Maharaj Kumari Ji Sahiba, His Highness the Maharaja Sahib Malvendra Bahadur has been graciously pleased to order that—

- (1) All Political prisoners detained or convicted under Punjab Public Safety Act, 1947, as applied to Nabha State, or convicted under Section 188 I.P.C., be granted amnesty and released unconditionally.
- (2) Prisoners convicted for offences other than political offences shall be given remissions as explained hereunder:—
 - (a) Prisoners sentenced to five years of imprisonment or more shall get a remission of one year;
 - (b) Prisoners sentenced to one year of imprisonment or more and less than five years shall get a remission of six months;
 - (c) Prisoners sentenced to a term of imprisonment less than one year and more than three months shall get a remission of three months only; and
 - (d) Prisoners sentenced to three months imprisonment or less shall get a remission of half of the sentence...

In compliance with the said order the respondent No. 1 was released from the jail on 20-7-2004. Thus by virtue of the order Ex. R. 1/A, he suffered a sentence of 7 months and 16 days and obtained his release long before completing his sentence of two years

Under provisions of section 7 of the Representation of the People Act, 1951, a person would incur a disqualification for membership of a State Legislature if whether before or after the commencement of the Constitution, he has been convicted by a Court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release. Now the main question for consideration is as to what is the effect of the order of release passed on the occasion of the birth of Shree Maharaj Kumari Ji Sahiba, in compliance with which the respondent No. 1 had obtained his release before completing his sentence of two years.

Section 401, Code of Criminal Procedure, reserves powers for a Provincial Government to suspend the execution of a sentence of a prisoner or to remit the whole or a part of it, and it was acknowledged by the learned counsel for the parties that the Code of Criminal Procedure was applicable to the Nabha State as well and was in force there since before 1947. The order for the grant of amnesty to all political prisoners convicted under the Punjab Public Safety Act, 1947, and granting them unconditional release, as well as of allowing remissions of sentences for fixed periods to different categories of prisoners, and which was purported to be signed by the Home Minister for Chief Minister, on the wishes of His Highness Maharaja Malvinder Bahadur Sahib, is evidently an order passed by the His Highness as Head of the Executive authority of the Government under the provisions of Section 401 Cr. P.C. By this order the respondent No. 1 was fully set at liberty, without any future risk of his being recalled to serve the remitted portion of sentence hanging on his head. Orders under Section 401 Cr. P.C. are, in fact, intended to imply a reduction of sentence to the amount to which a prisoner stands convicted, and it limits the period of his sentence only to such a period which one completes while staying in jail.

Even if the order is presumed to be passed by His Highness, the Maharaja of Nabha as a special order for remission in exercise of his powers as a Ruler of the State, as was urged by the learned counsel for the petitioner during arguments, the result is the same, that is, the reduction of sentence, and limiting it to the served portion of the sentence by him. The contention that the order of remission under Section 401 Cr. P.C. does not act to reduce the amount of sentence as it was originally imposed by the order of the Court, and that the sentence should be deemed to subsist in spite of the order of remission, does not appeal at all. In the case of an unconditional release, as the present case is, the accused does not suffer from the sentence any longer after once he has been released from the jail,

and in such a case to presume the sentence to subsist, even after the release order, carries no meaning. It would have been different had the release been conditional under section 401, subject to some conditions imposed along the order of remission, as in that case the accused had to complete the period of his sentence if he happened to commit a breach of the conditions imposed, and in such a case the sentence might be said to subsist even after he had obtained release under the order of remission. The position of one, whose release is ordered without any condition under Section 401(1), Criminal Procedure Code, however, stands on quite a different footing. In the present case the respondent No. 1, who happened to be in the position of a political offender, was given full freedom without any conditions imposed upon him, and so in his case it cannot be said that the sentence subsisted against him even after the release order was passed in his favour.

While discussing the effect of the order of remission in the case reported in A.I.R. 1938 Nagpur 513, at page 520, it is emphasised that the effect of the order of remission is to wipe out the remitted portion of the sentence altogether and not merely to suspend its operation, which fully supports the contention raised by the respondent No. 1.

It is argued that a reduction of sentence to be effective for purposes of section 7 of the Representation of the People Act, 1951, should be only by a Court of Law and an order for remission passed under section 401, Cr. P.C., by the executive authority, is not to be taken into consideration while considering the effects of Section 7 of the Representation of the People Act.

Remission by the Government executive authority is to have the same effect as an order passed by a Court of Law in appeal or on revision. Under Section 7 of the Representation of the People Act we have simply to look to the amount of sentence imposed on a person, and it makes no difference whether the sentence is reduced by a Court of Law on appeal or by revision or by the powers of the Government reserved for it by law under Section 401 Cr. P.C. The effect in both the cases is the same. The word "sentence" in Section 7 of the Representation of the People Act, 1951, means in fact the final sentence to which a person is subjected. It is quite immaterial whether the order about the final sentence is passed by a Court of Law or by an executive authority. The said point came in discussion in the case of Aska-Surada-Non Muhammadan General Rural Constituency 1937 also, reported in the Indian Election Cases by Sen and Poddar at page 82, which discussed a case of remission by the local Government under Section 401 Cr. P.C. While discussing as to whether the orders passed by Judicial Courts and the orders passed under Section 401 Cr. P.C. stand on different footings, it was held that where a sentence is suspended or remitted unconditionally under section 401, it tantamounts to reduction of the sentence by the highest authority concerned; and as such a person, whose sentence was reduced, could not be deemed to be disqualified from being chosen as a member of legislature.

We are thus of the opinion that while considering the amount of sentence for purposes of Section 7(b) of the Representation of the People Act the order for remission passed by an executive authority is equally effective for reduction of sentence, and applying the principle to the present case we come to the conclusion that the sentence imposed on the respondent No. 1 was reduced to a period of 7 months and 16 days only by the order of amnesty Ex: R. 1/A.

The counsel for the petitioner raised a point that the order of amnesty in question was to be treated simply of a nature of remissions which are allowed to the prisoners during the period of imprisonment on grounds of good behaviour or working on holidays under the jail rules, but such an interpretation cannot possibly be put on the orders passed under section 401 Cr. P.C. The effect of the remissions given to the prisoners under Jail Rules is simply to cut a period of sentence on certain grounds for which Rules are laid down in the Jail Manual, by way of concessions and rewards, and such remissions cannot operate to effect the order of sentence passed by a Court of law. The argument to treat the order in question as one of the nature of a jail order carries no force at all.

Whether the order is treated as passed by His Highness his capacity as a Ruler of the State or as the head of the executive authority of the State on the advice of his Ministers under Section 401, Cr. P.C., it is equally effective to cause reduction in the sentence. We are of the opinion that the final sentence, which the accused was subjected to, was for a period of 7 months and 16 days, much

less than two years, and consequently he did not suffer any disqualification under Section 7(b) of the Representation of the People Act which could be a bar against him for his presenting a nomination paper for an election to the seat of the Legislative Assembly. The issue is, therefore, decided in favour of the respondent No. 1.

Issue No. 6—

In view of the finding on issue No. 5 the petition cannot succeed. In the result the petition is dismissed. We further order the petitioner to pay Rs. 150 to the respondent No. 1 as his costs and as incidental to the petition.

Pronounced this day the 6th of January, 1953, in open court.

(Sd). S. G. MATHUR, *Member.*

I agree

(Sd.) JAGIT SINGH, *Chairman.*

I agree.

(Sd). DALIP SINGH JAIN, *Member.*

[No. 19/211/52-Elec.-III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.